

UNITED STATES OF AMERICA, )  
 )  
v. ) Crim. No. 03-76-B-W  
 )  
MICHAEL RYAN FLANDERS, )  
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 )  
Defendant )

Defendant Michael Ryan Flanders is charged with possessing a firearm affecting interstate commerce, after having been committed to a mental institution, and with making a false statement in the acquisition of a firearm, violations of 18 U.S.C. § 922(g)(4) and § 924(a)(2). The charge began as a complaint supported by an officer's affidavit. (See Affidavit in Support of Criminal Complaint and Search Warrants, filed in paper form in the search warrant file.) The officer recited that he had probable cause to believe an offense had been committed because, inter alia, "records recovered from Augusta Mental Health Institute reveal that on May 10, 1996, Michael Ryan Flanders, DOB [xx-xx-xxxx], was involuntarily committed to that institution after making three suicide attempts in three weeks." The parties now agree that to date no records have been "recovered" from Augusta Mental Health Institute, but rather the affiant had seen a copy of a "blue paper"<sup>1</sup> application for emergency involuntary admission to a mental hospital,

<sup>1</sup> “Blue paper” is the short hand parlance for emergency involuntary admission applications of this ilk because historically the three part forms were printed on one blue paper. Pursuant to 34-B M.R.S.A. § 3863, the emergency procedure requires the “blue paper” to be signed first by an “applicant” who explains the grounds for his or her belief that the person to be hospitalized is mentally ill and poses a likelihood of serious harm. *Id.*, § 3863(1). As part of the same “blue paper” a licensed physician or other statutorily enumerated health care provider must certify that he or she has examined the person on the date of the certification and is of the opinion that the person is mentally ill and does pose a likelihood of serious

(Gov't. Ex. 2), maintained on file by the Augusta Police Department following its interaction with Flanders in May 1996. After Flanders's indictment on these charges, the defendant and the Government filed a series of motions targeting issues surrounding the admissibility of the blue paper. Those motions are the defendant's motion to dismiss/motion in limine seeking an order precluding the Government from introducing evidence (Docket No. 31), the Government's motion for disclosure of commitment records (Docket No. 33), and the defendant's motion to quash a subpoena served upon the Augusta Mental Health Institute (Docket No. 39). I now **GRANT** the motion for disclosure of commitment records, **DENY** the motion to quash, and **RECOMMEND** that the court **DENY** the motion to dismiss together with the related motion in limine seeking exclusion of any (emphasis added) evidence concerning Defendant's alleged prior involuntary commitment.

### ***Background***

The parties are in agreement that there are no factual disputes that the court need resolve in deciding these motions.<sup>2</sup> For that reason an evidentiary hearing was not held, but I did schedule oral argument on the various motions. The Director of Health Information/Custodian of the Records from Augusta Mental Health Institute (AMHI) was subpoenaed by the Government to appear at that oral argument. In response to the subpoena, and with my permission, the custodian did not appear in person, but an Assistant Attorney General, representing the State of Maine, filed a letter basically

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harm. *Id.*, § 3863(2). Finally a judicial officer "shall endorse" the application and certification if they are "regular and in accordance with the law." *Id.*, § 3863(3). (See Gov't. Ex. 2.)

<sup>2</sup> Defendant Flanders does not necessarily agree with the Government's recitation of the underlying facts, but simply maintains that those facts are irrelevant to the resolution of this dispute. My references to background facts have therefore assumed those facts to be as stated in the Government's various filings without reference to specific issues that may be disputed.

acknowledging receipt of the subpoena for “the completed application for Emergency Involuntary Commitment to a Mental Hospital relating to Michael Ryan Flanders and dated May 10, 1996.” The Assistant Attorney General explained that pursuant to 34-B M.R.S.A. § 1207 she had advised hospital personnel that they were prohibited “from disclosing patient information in the absence of a release for the patient or a court order.” (Gov’t Ex. 1). The AUSA handling this matter represented to me that in the event an order issued from this court, he was confident the State would provide the subpoenaed documents without objection.

This case arose in a rather circuitous fashion. In October 2003, the Violent Crimes Task Force sought and obtained a search warrant for Flanders’s truck and residence based upon information they received from Flanders’s co-workers at Maine General Medical Center (MGMC) in Augusta, Maine, where all of the men worked as security officers. The first co-worker said that in April 2002 Flanders indicated that he had a 9 mm pistol that he wanted to sell and that ultimately the co-worker bought the pistol from Flanders for \$250.00. At the time of the sale the gun had been stored under the front seat of Flanders’s truck. In September 2002, Flanders bought the gun back from the co-worker, ostensibly to trade it in at Jim’s Gun Shop in Winslow because Flanders wanted to purchase another gun.

The Augusta Police retrieved the records from Jim’s Gun Shop showing that on October 25, 2002, Flanders purchased a Glock Model 30.45 caliber pistol from that establishment. Flanders completed required paperwork, including a certification that he had never been committed to a mental institution. In late 2002, Flanders showed a different co-worker his new gun, again retrieving it from under the driver’s seat of his

truck. Finally in October 2003, a year later, a third and fourth co-worker at MGMC, who both also happened to be part-time Hallowell Police Officers, talked with Flanders on two separate occasions and learned from him that he was in the habit of keeping a loaded handgun under the driver's seat of his pickup. Both part-time police officers reported that Flanders had assured them that he keeps a loaded handgun in his truck and that he would provide them with "backup" if they ever needed it. Flanders's truck was outfitted with an amber light, a police scanner, and multiple antennas. Finally another co-worker and retired Augusta Police Officer spoke with Flanders on October 30, 2003. At that time Flanders was visibly upset over a recent breakup with his girlfriend. The retired police officer saw Flanders in his truck and saw a box of .45 caliber ammunition in plain view on the seat of the truck.

The affiant used all this information to obtain a search warrant that I issued on October 30, 2003, authorizing a search of the truck and an anticipatory search of Flanders's residence only in the event the gun was recovered from the truck. The search of the residence would have permitted a search for documentation pertaining to the weapon recovered from the truck. Attached to the application for the search warrant was a copy (Ex. B, in support of search warrant affidavit) of an Application for Emergency Involuntary Admission to a Mental Hospital signed by a judicial officer, a medical doctor, and a licensed clinical social worker. This document was described in the affidavit as "recovered" from AMHI (Aff. ¶ 4). However, the Government's response to the motion to dismiss (Docket No. 30, ¶¶ 1 -7) explains how the copy actually came into the Government's possession. Officer Christopher Shaw of the Augusta Police Department learned from other police officers about Flanders's behavior at MGMC and

also allegedly learned that Flanders's had on more than one occasion bragged about being previously involuntarily committed to AMHI in 1996. Based upon that information Shaw requested a search of the Augusta Police Department records for involuntary committals in 1996. As luck would have it, the Augusta Police Department had been the entity authorized to take Flanders into custody and transport him to AMHI pursuant to the judicial officer's order. The police department had kept its own copy of the order to transport (Gov't. Ex. 2) and that copy formed the basis of the Government's case.

By this series of motions the defendant now challenges the admissibility of the "blue paper," either by copy obtained from the police department or by original subpoenaed from AMHI, on the basis that it is confidential pursuant to the state statutory provision cited above and under Maine Rule of Evidence 503(b). Additionally, Flanders maintains that the document itself is a confidential communication between a licensed psychotherapist and his patient that is not subject to disclosure under the federally recognized patient/psychotherapist privilege enunciated in Jaffee v. Redmond, 518 U.S. 1 (1996). The Government, on the other hand, wants the court to formally order disclosure of the original patient records from AMHI, at least to the extent requested by their subpoena,<sup>3</sup> in order to meet anticipated evidentiary objections regarding authenticity and reliability of the copies presently available to the Government.

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<sup>3</sup> At oral argument the Government suggested for the first time that the disclosure it sought might go beyond the "completed application" and include a "patient treatment note" that would verify admission. I intend by this order to address only the "completed application" as identified in the subpoena to AMHI and marked as Government Exhibit 2 during the course of this hearing. If, of course, AMHI representatives are of the opinion that the "completed application" as identified in the subpoena involves other documents, they would presumably provide those documents to the Government in response to the subpoena. Since I am recommending that this Court deny defendant's motion to quash the subpoena, compliance with the subpoena would be left to AMHI. My recommendation regarding granting the Government's motion for disclosure reaches no further than Government Exhibit 2 because that is the only documentation that the parties and I have actually seen. If the party responsible for complying with the subpoena believes that a "completed application" as identified in the subpoena involves other documents he

### *Discussion*

In United States v. Chamberlain, 159 F.3d 656 (1st Cir. 1998), the First Circuit Court of Appeals addressed the narrow issue of whether a five-day emergency detention of the sort that is alleged in this case amounts to a “commitment” for purposes of 18 U.S.C. § 922(g)(4). Id. at 658. The Court held that it does. Id. at 665 (affirming the district court holding that “Chamberlain’s five-day involuntary admission, which was followed by his continued admission on a voluntary basis, constituted a ‘commitment’ for purposes of the federal firearms ban”).

#### *1. Evidentiary Privilege under federal law*

In Jaffee v. Redmond, 518 U.S. 1 (1996), the United States Supreme Court recognized a federal evidentiary privilege between a psychotherapist and his or her patient. The party asserting this privilege has the burden of showing that “the allegedly privileged communications were made (1) confidentially (2) between a licensed psychotherapist and her patient (3) in the course of diagnosis or treatment.” In re Grand Jury Proceedings (Gregory P. Violette), 183 F.3d 71, 72 (1st Cir. 1999). The information on the “blue paper” cannot possibly fall within the evidentiary privilege. The state statutory scheme under which it was generated envisions that a judicial officer will review and endorse the form before it has any legal effect, thus destroying any prospect of confidentiality between the mental health examiner and the patient. Furthermore, it is

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or she will have to alert the Government with greater specificity as to what those documents might be. I note that in United States v. Chamberlain, 159 F.3d 656, 657 (1st Cir. 1998), when discussing Maine procedure under this statutory scheme, the Court of Appeals referred to the “24-Hour Certification Form,” a form apparently generated by the receiving institution pursuant to the requirements of 34-B M.R.S.A. § 3863(7)(C). I would suspect that form to be within the same analysis as undertaken by this order, but because the Government has never raised anything with me or apparently with AMHI about such a form, a clarification of the original subpoena may be necessary. I have declined the Government’s invitation to make this order specifically applicable to a “patient treatment” or “admission note” because I do not know what that term might mean to AMHI or what might be produced in response to an order requiring disclosure of such documents.

not the substance of any “privileged” communications that are disclosed by the “blue paper,” but rather the examiner’s opinion that the “patient” suffers from a mental illness and poses a likelihood of serious harm based upon his conduct during the last three weeks and his current mental state. The “blue paper” does not reveal that any communications were necessarily made between the defendant and the examiner.

One need look no further than this Court’s decision in United States v. McFadden, 211 F. Supp. 2d 234 (D. Me. 2002), and its discussion of Texas law to ascertain that this sort of documentation is routinely admitted into evidence in cases of this ilk. Id. at 235 (“A judge of the Cherokee County Court issued an Order of Protective Custody on its said motion dated February 23, 1998, in which the court found, after having considered the Application, motion, and certificate of the physician and having taken further evidence, if any was needed for a fair determination of the matter, ‘that the conclusion and beliefs of the Applicant, movant and certifying physician are adequately supported by the information presented. Government’s Exhibit No. 4.’”). Defendant has failed to show that the “blue paper” is entitled to any evidentiary privilege under Federal Rule of Evidence 501 or Redmond v. Jaffee and its progeny.

2. *Confidentiality under Maine law and the corresponding state evidentiary privilege*<sup>4</sup>

A rule of evidentiary privilege differs from a broad confidentiality provision contained within state law. United States v. Chase, 340 F.3d 978, 982 (9th Cir. 2003), cert. denied, \_\_\_ S. Ct. \_\_\_, No. 03-1118, 2004 WL 233969, 2004 U.S. LEXIS 1682 (Mar. 1, 2004) (“At the outset, we differentiate two distinct concepts: confidentiality and testimonial privilege. By ‘confidentiality,’ we refer to the broad blanket of privacy that state laws place over the psychotherapist-patient relationship. By ‘privilege,’ we mean the specific right of a patient to prevent the psychotherapist from testifying in court.”). Flanders recognizes that distinction and urges that this court should rule the “blue paper” inadmissible because it is declared confidential pursuant to the provisions of 34-B M.R.S.A. § 1207(1) (“All orders of commitment, medical and administrative records, applications and reports, and facts contained in them, pertaining to any client shall be kept confidential and may not be disclosed by any person . . .”). Flanders relies upon language in United States v. Sutherland, 929 F.2d 765 (1st Cir. 1991), for the proposition that the federal court may “choose to exercise its supervisory powers excluding ill-gotten evidence” in those cases where there is a “flagrant abuse of the law by state officials [and] where federal officials seek to capitalize on that abuse.” Id., at 770.

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<sup>4</sup> Although Flanders cites and relies upon Maine Rule of Evidence 503, I do not see what relevance that state evidentiary rule has to these proceedings. In any event, the state evidentiary rule says that communications relevant to an issue in proceedings to hospitalize the patient for mental illness are excepted from the general physician/psychotherapist – patient privilege. Thus, under state law Flanders would have no right to claim an evidentiary privilege regarding the blue paper communications during proceedings regarding the issue of his hospitalization. I have analyzed this entire problem only under the state confidentiality statute because I believe it is the only state law possibly relevant to this case. The state statute does provide that disclosure pursuant to court order is subject to the limitation in Rule 503 as discussed below. See 34-B M.R.S.A. § 1207(1)(C). But the privilege recognized in Rule 503 only applies to a testimonial privilege regarding “communications” in a non-hospitalization proceeding, something that has nothing to do with the admissibility of this “blue paper” in a federal criminal trial.



I am satisfied that in this case I do not need to delve into the apparently unsettled issue of whether or not the Augusta Police Department's retention and subsequent distribution of copies of "blue papers" is any abuse, flagrant or otherwise, of the state's confidentiality laws. The facts that have been put before me support the inference that the police knew about the fact of Flanders's prior hospitalization at AMHI from comments that Flanders himself made to his co-workers. The Government has now sought to subpoena from AMHI the "blue paper" and, apparently, related documentation that would establish the fact of Flanders's hospitalization at that institution. The document sought to be subpoenaed, a copy of which has been made an exhibit, does not contain any "communications" that would be subject to an evidentiary privilege. As the Assistant Attorney General pointed out in her letter to the AUSA handling this case, the confidentiality statute provides that "[i]nformation may be disclosed if ordered by a court of record." Thus the statutory confidentiality is subject to the lawful order of a court of record for disclosure. In this case the Government seeks just such a court order to obtain the documentation it wants to introduce at trial to support other available testimony about the fact of Flanders's hospitalization. I find nothing in the Government's motion for disclosure that runs afoul of 34-B M.R.S.A. § 1207(1) and, therefore, I find no reason to grant Flanders's motion to quash the subpoena. Furthermore, it would frustrate entirely the purpose of 18 U.S.C. § 922(g)(4) were a defendant in Flanders's position able to quash a subpoena issued in these circumstances.

## Conclusion

Based upon the foregoing, I now **GRANT** the Government's motion for disclosure of commitment records (Docket No. 33) and **DENY** Flanders's motion to quash the subpoena issued in support of the motion for disclosure (Docket No. 39). I further recommend that the court **DENY** the motion to dismiss and **DENY** the related motion in limine for entry of an order precluding the Government from introducing in evidence any (emphasis added) evidence concerning Defendant's alleged prior involuntary commitment (Docket No. 31).<sup>5</sup>

## NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which *de novo* review by the district court is sought, together with a supporting memorandum, and request for oral argument before the district judge, if any is sought, within ten (10) days of being served with a copy thereof. A responsive memorandum and any request for oral argument before the district judge shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

March 4, 2004

/s/Margaret J. Kravchuk  
U.S. Magistrate Judge

**U.S. District Court  
District of Maine (Bangor)  
CRIMINAL DOCKET FOR CASE #: 1:03-cr-00076-JAW-ALL**

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<sup>5</sup> Defendant's counsel conceded at oral argument that dismissal of the indictment might be premature at this juncture, even if he were to prevail on his motion to quash the subpoena and to exclude evidence of the "blue paper." Theoretically the Government could possibly prove up its case by some other means.

**Case title:** USA v. FLANDERS

**Other court case number(s):** None

**Magistrate judge case number(s):** 1:03-mj-00063-MJK

**Date Filed:** 11/13/03

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**Assigned to:** JUDGE JOHN A.  
WOODCOCK JR.

**Referred to:**

**Defendant(s)**

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(1)

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